

House Amendment to
Senate File 272

S-3141

1 Amend Senate File 272, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, after line 10 by inserting:

4 <DIVISION
5 EMINENT DOMAIN

6 Sec. ____ . NEW SECTION. **6A.15 Property on state**
7 **historic registry.**

8 1. Property listed on the state register of
9 historic places maintained by the historical division
10 of the department of cultural affairs shall not be
11 removed from the register solely for the purpose of
12 allowing acquisition of the property by condemnation,
13 unless such condemnation is undertaken by the
14 department of transportation.

15 2. Property listed on the state register of
16 historic places maintained by the historical division
17 of the department of cultural affairs shall not be
18 condemned by the state or a political subdivision
19 unless a joint resolution authorizing commencement of
20 the condemnation proceedings is approved by a vote of
21 at least two-thirds of the members of both chambers
22 of the general assembly and signed by the governor.
23 The approval requirements of this subsection shall not
24 apply to condemnation undertaken by the department of
25 transportation.

26 Sec. ____ . Section 6A.19, Code 2013, is amended to
27 read as follows:

28 **6A.19 Interpretative clause.**

29 A grant in this chapter of right to take private
30 property for a public use shall not be construed as
31 limiting a like grant elsewhere in the Code for another
32 and different use. Unless specifically provided by
33 law, this chapter shall not be construed to limit or
34 otherwise affect the application of chapters 478 and
35 479 to the eminent domain authority of the utilities
36 division of the department of commerce.

37 Sec. ____ . Section 6A.22, subsection 2, paragraph
38 c, subparagraph (1), Code 2013, is amended to read as
39 follows:

40 (1) (a) If private property is to be condemned for
41 development or creation of a lake, only that number
42 of acres justified as reasonable and necessary for
43 a surface drinking water source, and not otherwise
44 acquired, may be condemned. In addition, the acquiring
45 agency shall conduct a review of prudent and feasible
46 alternatives to provision of a drinking water source
47 prior to making a determination that such lake
48 development or creation is reasonable and necessary.
49 Development or creation of a lake as a surface drinking
50 water source includes all of the following:

1 (i) Construction of the dam, including sites for
2 suitable borrow material and the auxiliary spillway.
3 (ii) The water supply pool.
4 (iii) The sediment pool.
5 (iv) The flood control pool.
6 (v) The floodwater retarding pool.
7 (vi) The surrounding area upstream of the dam
8 no higher in elevation than the top of the dam's
9 elevation.

10 (vii) The appropriate setback distance required
11 by state or federal laws and regulations to protect
12 drinking water supply.

13 (b) For purposes of this subparagraph (1), "*number*
14 *of acres justified as reasonable and necessary for*
15 *a surface drinking water source*" means according to
16 guidelines of the United States natural resource
17 conservation service and according to analyses of
18 surface drinking water capacity needs conducted
19 by one or more registered professional engineers.
20 The registered professional engineers may, if
21 appropriate, employ standards or guidelines other
22 than the guidelines of the United States natural
23 resource conservation service when determining the
24 number of acres justified as reasonable and necessary
25 for a surface drinking water source. The data and
26 information used by the registered professional
27 engineers shall include data and information relating
28 to population and commercial enterprise activity for
29 the area from the two most recent federal decennial
30 censuses unless the district court of the county in
31 which the property is situated has determined by a
32 preponderance of the evidence that such data would
33 not accurately predict the population and commercial
34 enterprise activity of the area in the future.

35 (c) A second review or analysis of the drinking
36 water capacity needs shall be performed upon receipt
37 by the acquiring agency of a petition signed by not
38 less than twenty-five percent of the affected property
39 owners. The registered professional engineer to
40 perform the second review or analysis shall be selected
41 by a committee appointed by the affected property
42 owners and whose membership is comprised of at least
43 fifty percent property owners affected by the proposed
44 condemnation action. The acquiring agency shall be
45 responsible for paying the fees and expenses of such
46 an engineer.

47 (d) If private property is to be condemned for
48 development or creation of a lake, the plans, analyses,
49 applications, including any application for funding,
50 and other planning activities of the acquiring agency

1 shall not include or provide for the use of the lake
2 for recreational purposes.

3 Sec. _____. Section 6B.54, subsection 10, paragraph
4 a, Code 2013, is amended by adding the following new
5 subparagraph:

6 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and
7 reasonable costs not to exceed one hundred thousand
8 dollars, attributable to a determination that the
9 creation of a lake through condemnation includes a
10 future recreational use or that a violation of section
11 6A.22, subsection 2, paragraph "c", subparagraph (1),
12 subparagraph division (d), has occurred, if such fees
13 and costs are not otherwise provided under section
14 6B.33.

15 Sec. _____. NEW SECTION. 6B.56B Disposition of
16 condemned property — two-year time period.

17 1. When two years have elapsed since property
18 was condemned for the creation of a lake according
19 to the requirements of section 6A.22, subsection 2,
20 paragraph "c", subparagraph (1), and the property has
21 not been used for or construction has not progressed
22 substantially from the date the property was condemned
23 for the purpose stated in the application filed
24 pursuant to section 6B.3, and the acquiring agency has
25 not taken action to dispose of the property pursuant
26 to section 6B.56, the acquiring agency shall, within
27 sixty days, adopt a resolution offering the property
28 for sale to the prior owner at a price as provided in
29 section 6B.56. If the resolution adopted approves an
30 offer of sale to the prior owner, the offer shall be
31 made in writing and mailed by certified mail to the
32 prior owner. The prior owner has one hundred eighty
33 days after the offer is mailed to purchase the property
34 from the acquiring agency.

35 2. If the acquiring agency has not adopted a
36 resolution described in subsection 1 within the
37 sixty-day time period, the prior owner may, in writing,
38 petition the acquiring agency to offer the property
39 for sale to the prior owner at a price as provided in
40 section 6B.56. Within sixty days after receipt of
41 such a petition, the acquiring agency shall adopt a
42 resolution described in subsection 1. If the acquiring
43 agency does not adopt such a resolution within sixty
44 days after receipt of the petition, the acquiring
45 agency is deemed to have offered the property for sale
46 to the prior owner.

47 3. The acquiring agency shall give written notice
48 to the owner of the right to purchase the property
49 under this section at the time damages are paid to the
50 owner.

1 Sec. _____. Section 403.7, subsection 1, unnumbered
2 paragraph 1, Code 2013, is amended to read as follows:
3 A municipality shall have the right to acquire by
4 condemnation any interest in real property, including a
5 fee simple title thereto, which it may deem necessary
6 for or in connection with an urban renewal project
7 under this chapter, subject to the limitations on
8 eminent domain authority in ~~chapter~~ chapters 6A and 6B.
9 However, a municipality shall not condemn agricultural
10 land included within an economic development area
11 for any use unless the owner of the agricultural land
12 consents to condemnation or unless the municipality
13 determines that the land is necessary or useful for any
14 of the following:
15 Sec. _____. NEW SECTION. 423B.11 Use of revenues —
16 limitation.
17 The revenue raised by a local sales and services
18 tax imposed under this chapter by a county shall not
19 be expended for any purpose related to a project that
20 includes the condemnation of private property for
21 the creation of a lake according to the requirements
22 of section 6A.22, subsection 2, paragraph "c",
23 subparagraph (1), if the local sales and services tax
24 has not been approved at election in the area where the
25 property to be condemned is located.
26 Sec. _____. Section 455A.5, Code 2013, is amended by
27 adding the following new subsection:
28 NEW SUBSECTION. 7. The authority granted to the
29 commission to acquire real property for purposes
30 of carrying out a duty related to development or
31 maintenance of the recreation resources of the state,
32 including planning, acquisition, and development of
33 recreational projects, and areas and facilities related
34 to such projects, shall not include the authority to
35 acquire real property by eminent domain.
36 Sec. _____. Section 456A.24, subsection 2, unnumbered
37 paragraph 1, Code 2013, is amended to read as follows:
38 Acquire by purchase, ~~condemnation~~, lease, agreement,
39 gift, and devise lands or waters suitable for the
40 purposes hereinafter enumerated, and rights-of-way
41 thereto, and to maintain the same for the following
42 purposes, ~~to-wit~~:
43 Sec. _____. Section 456A.24, Code 2013, is amended by
44 adding the following new subsection:
45 NEW SUBSECTION. 15. The authority granted the
46 department to acquire real property for any statutory
47 purpose relating to the development or maintenance
48 of the recreation resources of the state, including
49 planning, acquisition, and development of recreational
50 projects, and areas and facilities related to such

1 projects, shall not include the authority to acquire
2 real property by eminent domain.

3 Sec. _____. Section 461A.7, Code 2013, is amended to
4 read as follows:

5 **461A.7 ~~Eminent domain~~ Purchase of lands — public**
6 **parks.**

7 The commission may purchase ~~or condemn~~ lands from
8 willing sellers for public parks. ~~No~~ A contract for
9 the purchase of such public parks shall not be made to
10 an amount in excess of funds appropriated therefor by
11 the general assembly.

12 Sec. _____. Section 461A.10, Code 2013, is amended to
13 read as follows:

14 **461A.10 Title to lands.**

15 The title to all lands purchased, ~~condemned,~~ or
16 ~~donated,~~ hereunder, for park ~~or highway~~ purposes and
17 the title to all lands purchased, condemned, or donated
18 hereunder for highway purposes, shall be taken in the
19 name of the state and if thereafter it shall be deemed
20 advisable to sell any portion of the land so purchased
21 or condemned, the proceeds of such sale shall be placed
22 to the credit of the ~~said~~ public state parks fund to be
23 used for such park purposes.

24 Sec. _____. Section 463C.8, subsection 1, paragraph
25 k, Code 2013, is amended to read as follows:

26 k. The power to acquire, own, hold, administer,
27 and dispose of property, except that such power is not
28 a grant of authority to acquire property by eminent
29 domain.

30 Sec. _____. REPEAL. Sections 461A.9 and 461A.75,
31 Code 2013, are repealed.

32 Sec. _____. SEVERABILITY. If any provision of this
33 division of this Act is held invalid, the invalidity
34 shall not affect other provisions or applications of
35 this division of this Act which can be given effect
36 without the invalid provision, and to this end the
37 provisions of this division of this Act are severable
38 as provided in section 4.12.

39 Sec. _____. EFFECTIVE UPON ENACTMENT. This division
40 of this Act, being deemed of immediate importance,
41 takes effect upon enactment.

42 Sec. _____. APPLICABILITY. Except as otherwise
43 provided in this division of this Act, this division
44 of this Act applies to projects or condemnation
45 proceedings pending or commenced on or after the
46 effective date of this division of this Act.

47 Sec. _____. RETROACTIVE APPLICABILITY.
48 Notwithstanding any provision of law to the contrary,
49 the following provision or provisions of this division
50 of this Act apply retroactively to projects or

1 condemnation proceedings pending or commenced on or
2 after February 15, 2013:

3 1. The section of this division of this Act
4 amending section 6A.22.

5 2. The section of this division of this Act
6 enacting section 6B.56B.>

7 2. Title page, by striking lines 1 and 2 and
8 inserting <An Act relating to the use of public and
9 private land, including the registration and titling>
10 3. Title page, line 4, after <program> by inserting
11 <, and to eminent domain authority and procedures, and
12 including effective date, retroactive applicability,
13 and other applicability provisions>
14 4. By renumbering as necessary.